

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

666

UNITED STATES COURT OF APPEALS

For The District of Columbia Circuit

No. 23036

September Term, 1968

United States of America,

v.

Willie Bridges,

Appellant.

Criminal 1943-68

Appeal from the United States District Court
For the District of Columbia

BRIEF FOR APPELLANT

Francis J. Ortman

Attorney appointed to represent
Appellant in this case.

United States Court of Appeals
For the District of Columbia Circuit

FILED FEB 10 1970

1700 Pennsylvania Ave. N.W.
Washington, D. C. 20006

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STATEMENT OF QUESTIONS PRESENTED

1. Was the Appellant deprived of his Constitutional rights by failing to have the testimony of an alibi witness at trial, who had been served with a forthwith subpoena but who arrived in Court too late to testify? (U.S. Constitution, Amendment VI).

2. Does the record in this case contain sufficient evidence of intent to commit a felony, either manslaughter or murder, to warrant a conviction under Count 1 of the indictment, namely, assault with intent to kill, Title 22 Section 501 District of Columbia Code, 1967 Edition?

3. Were the initial instructions of the Court as to the law applicable to Counts 1 and 2 and the clarification of the term "intent to kill" as requested by the jury, so erroneous or misleading as to warrant the granting of a new trial?

4. The presentment from the Grand Jury merely charged Appellant with carrying a dangerous weapon and, accordingly, is defective.

This case has not previously been before this Court.

JURISDICTIONAL STATEMENT

Case No. 23036 is a direct appeal under Title 28 U.S. Code 1291, without prepayment of costs. Francis J. Ortman, a member of the Bar of this Court, was appointed as counsel to represent Willie Bridges.

Appeal is taken from judgment, sentence, and commitment in District Court Criminal Case No. 1943-68, wherein Appellant, Willie Bridges was sentenced on May 2, 1969 to three (3) to nine (9) years on Count 1 of the indictment charging the offense of assault with intent to kill under Code Section 22-501; three (3) to nine (9) years on Count 2 of the indictment charging the offense of assault with a dangerous weapon under Code Section 22-502, to run concurrently with sentence imposed in Count 1, and three (3) to nine (9) years on Count 3 of the indictment charging the offense of carrying a dangerous weapon under Code Section 22-3204, to run concurrently with sentence imposed in Count 1 and Count 2.

Reference to Rulings
None

STATEMENT OF THE CASE

On October 2, 1968, the Appellant, Willie Bridges, voluntarily appeared in the Criminal Investigations Office of the Metropolitan Police Department, 35 K Street, N.E., pursuant to a telephone call from Officer Julius Turner, Jr., who had informed Mr. Bridges that he held a warrant for his arrest (Tr. 57). Upon arrival at Officer Turner's office, Mr. Bridges was served a warrant and placed under arrest on charges of assault with intent to kill and assault with a dangerous weapon on one Mrs. Ruby Parker on the 26th day of September, 1968, and of carrying a dangerous weapon without a license on the same date.

Mr. Bridges waived the right to counsel and was subsequently indicted by the Grand Jury on the same counts on December 4, 1968, and after entering a plea of not guilty on December 20, 1968, Appellant remained free on bond until after he was found guilty as indicted by a jury on March 12, 1969. Sentence was imposed upon Willie Bridges on May 2, 1969, by the United States District Court, of three to nine years on each count, the sentences to run concurrently. Appellant, through his Court appointed attorney in District Court, filed a notice of appeal on the same day.

A Motion for Release of Defendant on Personal Recognizance, Ten (10%) Percent Bond, or Work Release Bond Pending Appeal, was filed pro se by Willie Bridges and denied by the District Court on August 5, 1969.

The undersigned attorney was appointed to represent Appellant in this case on July 24, 1969, and subsequently received a copy of the record from the trial Court on or about October 23, 1969. On December 29, 1969, counsel attempted to file in this Court a Motion for Release on Personal Bond pending Appeal, which was rejected because the Order of the District Court, dated August 5, 1969, denying a similar motion contained no reasons therefor. After further research and investigation and with the assistance of two student assistants from George Washington University, a renewal of Motion for Release on

Personal Bond Pending Appeal was filed in the District Court on January 6, 1970 and, following argument before the Court on January 20 and 21, 1970, an Order was entered by the District Court for part-time custody release pending Court appearance, so that Appellant is presently employed in the District of Columbia on Monday through Friday pursuant to the Work Release Center regulations.

At the trial in the District Court Appellant testified on his own behalf but did not present the testimony of any alibi witness to substantiate his testimony that he did not commit the crimes as alleged, nor was he in the vicinity of the place where the crimes were alleged to have occurred on September 26, 1968. At first blush it would appear from the reading of Mr. Bridges' testimony at Tr. 87-88, that Mr. William Thomas (not Thomson) would not be able to produce favorable testimony because he could not remember what occurred on September 26, 1968. From a thorough investigation on the part of the student assistants and the undersigned attorney, I am convinced that Mr. William Thomas, who is employed at Free State Volkswagen, Inc., Marlow Heights, Maryland, was present in Court ready for trial on at least three occasions prior to March 11, 1969; that he and one or two others received forthwith subpoenas to testify at the trial of this case on March 12, 1969, and that he arrived in Court too late to testify on March 12, 1969.

Mr. Thomas, at the time and after the time of the alleged offenses, was a coemployee with Mr. Bridges and Mr. Bridges lived

with Mr. and Mrs. Thomas and their children at 7723 Muncy Road, Palmer Park, Maryland. Without pinpointing a particular time and place, I am satisfied that Mr. Thomas would testify that while his car was not working, Mr. Bridges would take him home from work in the latter's car, they would have dinner together and after dinner they would play pool on a pool table the Thomas children had received shortly before that time.

It is believed that the case should be remanded for a new trial for the purpose of receiving this testimony.

The evidence in this case, when considered in its entirety, does not warrant the jury finding the Appellant guilty of assault with intent to kill because the Government just did not prove the elements of such a crime beyond a reasonable doubt. The complaining witness, Mrs. Parker, made no reference whatsoever in her testimony that Mr. Bridges had any intention of killing her on September 26, 1968 or at any other time. Her testimony with respect to this Count 1 of the indictment, which relates to her personal knowledge of the alleged incident is as follows:

"A. * * * Mr. Bridges came up to the car side that I had closed the door and ordered me to get out of the cab, which I refused.

"Q. What did you do then?

"A. I still sat there. And he then went around on the other side of the cab, stuck his arm in the window with the gun and shot.

"Q. How many shots were fired, do you know?

"A. One, to my knowledge.

"Q. And were you struck by this shot?

"A. Yes, I was.

"Q. What part of your body was struck?

"A. In the abdomen." (Tr. 19-20)

* * * *

"Q. Now, after you were shot ma'am, do you recall what happened then or did you lose consciousness?

"A. I did not lose consciousness. Mr. Bridges went back to his car and drove through the alley behind the cab." (Tr. 20)

* * * *

"Q. Now, just prior to firing the shot, did he say anything to you?

"A. He ordered me out of the cab in obscene language and told me to get out of the cab and I refused.

"Q. Did he make any threatening statements to you?

"A. I didn't hear any." (Tr. 23)

The friend of Mrs. Parker, namely Mr. Arnold A. Williford, who was the only other alleged eyewitness for the Government in this case, testified as follows:

"Q. Before any shooting took place, did he (Willie Bridges) say anything to her?

"A. All he said was 'get out.'

"Q. Did he say anything else to her?

"A. That is all.

"Q. Did he make any threat to her of any kind?

"A. He did not.

"Q. You say that he fired a shot, is that right?

"A. That is right.

"Q. How many shots were fired, do you remember?

"A. One.

"Q. Do you know whether or not it took effect on anybody?

"A. It hit h re in the left side of her stomach."
(Tr. 35)

The next question and answer relate to the time after the alleged shot was fired and is extremely difficult to believe because of the other actions of all parties concerned, which allegedly took place on September 26, 1968:

"Q. Did Bridges say anything after the shot was fired?

"A. As soon as he shot he said, 'I will kill you.'"
(Tr. 35)

The above factual evidence of record, when considered together with the Court's instructions to the jury and the closing argument of Government counsel to the jury warrant that the jury verdict be set aside and the case remanded for a new trial.

SUMMARY OF ARGUMENT

It is realized that the jury verdict in this case was rendered on March 12, 1969, and that no Motion for a New Trial was filed prior to the Notice of Appeal to this Court presumably because of the misunderstanding of the interested parties as to just what testimony would be given by Mr. William Thomas. While it is true that the whereabouts of Mr. Thomas was known at the time of the trial it was unfortunate in the interest of justice that he was not available to testify during the course of the trial. The investigation of the undersigned attorney reveals that his failure to testify should not be directed to the Appellant, Willie Bridges, who has had only a third grade grammar school education, but to a fair and reasonable misunderstanding as to just what impact his testimony may have had upon the jury. Under the circumstances, it is believed that a new trial would be warranted under the law as enunciated by this Court in the case of Jackson v. United States, 125 App. D. C. 307 (1966), 371 F. 2d 960, and Campbell v. United States, 122 App. D. C. 250, 251 (1966), 377 F. 2d 135, 136.

Reference has previously been made to the testimony of record with respect to Count 1, namely, assault with intent to kill. The District of Columbia Code Encyclopedia specifically states as follows:

"To constitute the offense of assault with intent to kill, there must be an unlawful or criminal assault and the intent to commit a felony, either manslaughter or murder, and the assault and the intent to kill must concur." §22-501 ¶4, p. 42

The cases cited therein are of particular interest to the case at bar because the words "with intent to kill" are considered as an integral part of the statute as well as the related common law crime. Davis v. U.S. (1900) 16 App. D.C. 442; U.S. v. Angney (1887) 6 Mackey (17 D.C.) 66.

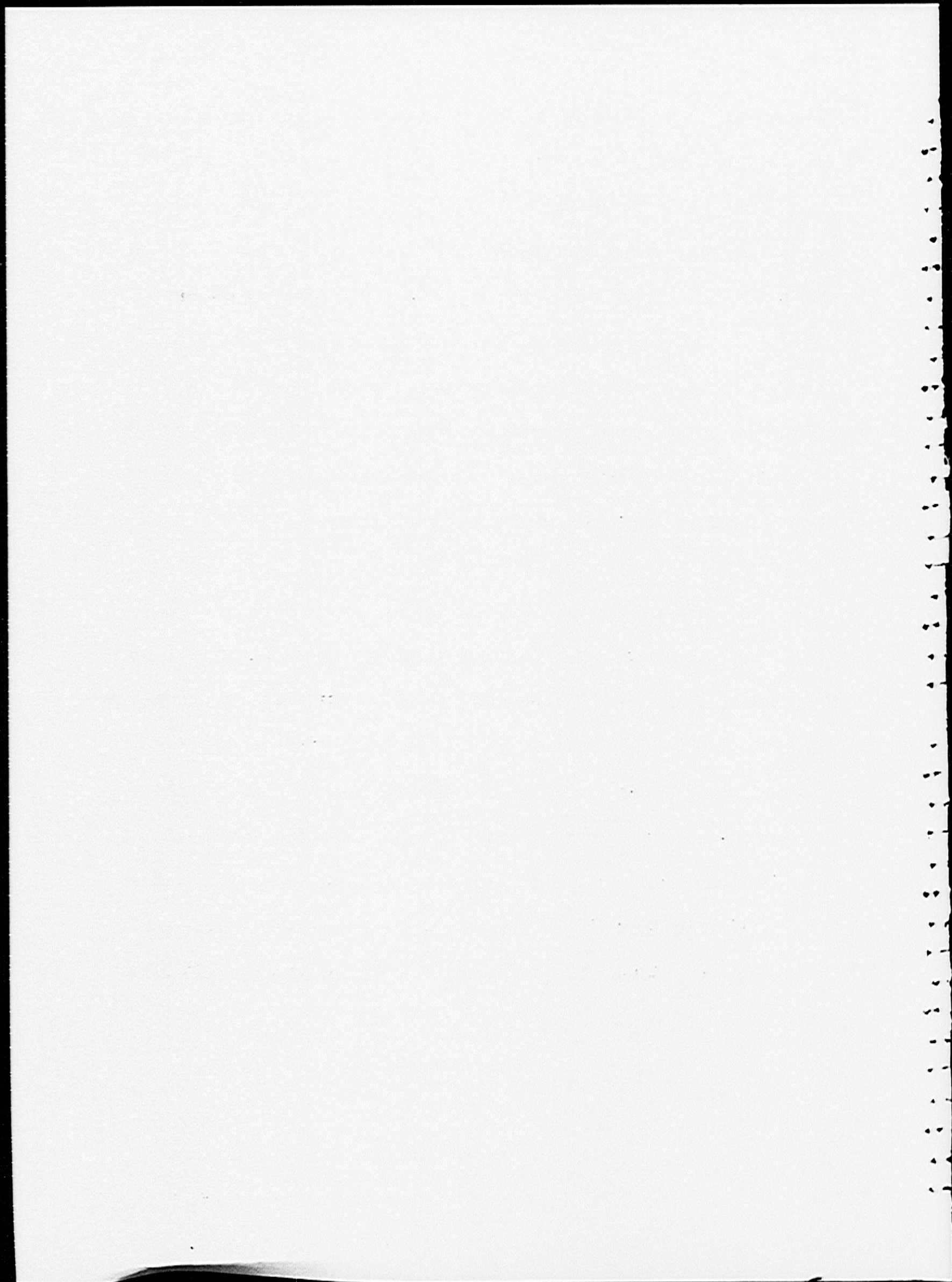
It is the position of Appellant in this case that the instructions on the issue of assault with intent to kill and assault with a dangerous weapon were so interrelated inasmuch as both contained the element of intent, that the jury became confused, particularly after the Court clarified the term "intent to kill" commencing at Tr. 123. See also Tr. 110-111.

The third count of the indictment is defective and the verdict should be reversed and the count dismissed with prejudice because the indictment of the Grand Jury, dated November 6, 1968, as signed by its Foreman, Joseph C. Davis, merely stated that the Grand Jurors present Willie Bridges in carrying a dangerous weapon. No reference in said presentment was made to the fact that said dangerous weapon was carried without a license therefor issued as provided by law.

Appellant respectfully submits that this Court should set aside the conviction of the Court below and remand this case for a new trial.

Respectfully submitted,

Francis J. Ortman
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Appellant in this case
1700 Pennsylvania Ave. N.W.
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CERTIFICATE OF SERVICE

I hereby certify I have this day served a copy of the foregoing Brief of Appellant upon John A. Terry, Assistant United States Attorney, by delivering a copy thereof to the office of the United States Attorney, United States Court House, Constitution Avenue and John Marshall Place, N. W., Washington, D. C.

Francis J. Ortman

February 10, 1970